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November 21, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Subject: In the Matter of Implementation of Pay Telephone Provisions
CC Docket No. 96-128

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, we hereby provide you with notice of an oral ex-parte communication in connection with the above-captioned proceeding. On November 18, 2005, the undersigned counsel spoke with Mr. Donald K. Stockdale, Jr. and Ms. Pamela Arluk. We discussed the pending petitions for declaratory ruling filed in Docket 96-128 by the IPTA, SPCA, and IPANY ("Petitions"). In particular, counsel inquired as to the status of any pending activity on the Petitions and the likelihood of action on the petitions by the end of this year. Further, counsel urged FCC action on the petitions as soon as reasonably possible. Counsel noted that hurricane Katrina provided another recent example of the continuing importance of payphones to the nation's communications infrastructure.

In addition to discussing the current status of the FCC's review of the Petitions, counsel provided the FCC representatives with a brief update as to the status of two pending proceedings involving actions for payphone access line refunds under the same FCC order that was the subject of the Petitions. Specifically, in a complaint by the NPCC filed with the Oregon Public Utility Commission ("OPUC"), the OPUC is continuing to hold the complaint in abeyance pending a ruling by the FCC on the Petitions. In an action brought by 51 payphone service providers against Qwest, including a number of members of the NPCC, the case is still pending at the Ninth Circuit Court of Appeals. Qwest is urging the Ninth Circuit to defer to the FCC's action on the Petitions. Oral argument is scheduled to be heard by the Ninth Circuit on December 8, 2005. A decision is expected in the middle of 2006.

Marlene H. Dortch
November 21, 2005
Page 2

In connection with the meeting, the undersigned counsel provided the FCC representatives with a handout entitled: "FCC Guidance Awaited For 15 States," a copy of which is attached.

We trust you will find this information to be useful. Should you have any questions or require any additional information, please contact the undersigned counsel directly.

Very truly yours,

A handwritten signature in cursive script, reading "Brooks E. Harlow".

Brooks E. Harlow

cc: Mr. Donald K. Stockdale, Jr. (emailed)
Ms. Pamela Arluk (emailed)

FCC Guidance Awaited For 15 States

Petitions to the Commission Pending in CC Dkt. No. 96-128:

Petition for Declaratory Ruling of Illinois Public Telecommunications Association (July 30, 2004)

Petition for Declaratory Ruling of Independent Payphone Association of New York (December 24, 2004)

Petition for Declaratory Ruling of Southern Public Communications Association (November 9, 2004)

The Petitions seek enforcement of the Commission's orders in docket 96-128 regarding the charges for payphone access line services provided to payphone service providers ("PSPs") pursuant to 47 U.S.C. §§ 201, 202, and 276.

RBOCs overcharged PSPs for years in violation of the Commission's New Services Test ("NST"). The Commission adopted the NST to eliminate RBOC rate discrimination as required by 47 U.S.C. § 276(a)

The Commission waived compliance with the NST by the deadline of April 15, 1997, *if* the RBOCs would refund charges in excess of NST-compliant rates

In all three petitions, RBOCs claim state-law "Filed Rate/Filed Tariff" doctrine trumps the FCC's orders for refunds of payphone access line overcharges and the non-discrimination requirements of Section 276(a).

Oregon PUC has case pending by PSPs against Qwest for refunds for overcharges in Oregon

Qwest asserted the "Filed Rate Doctrine" as a defense

OPUC is awaiting FCC action on the Petitions in 96-128 (order attached)

Ninth Circuit has case pending by PSPs against Qwest for refunds for overcharges in 11 states

Qwest has asked the Court to delay ruling pending FCC action on the Petitions

Oral argument is December 8, 2005

Decision not expected until mid-2006